

Arizona Administrative Register
Notices of Proposed Rulemaking

NOTICES OF PROPOSED RULEMAKING
Initiated After January 1, 1995

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register*.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY
DIVISION OF DEVELOPMENTAL DISABILITIES

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
Article 19	New Article
R6-6-1901.	New Section
R6-6-1902.	New Section
R6-6-1903.	New Section
R6-6-1904.	New Section
R6-6-1905.	New Section
R6-6-1906.	New Section
R6-6-1907.	New Section
R6-6-1908.	New Section
R6-6-1909.	New Section
R6-6-1910.	New Section
R6-6-1911.	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

A.R.S. §§ 41-1954(A)(1)(i), (A)(1)(j), and (A)(13), 46-134(12), 36-552, 36-554, 36-557, and Laws 1995, Ch. 84, § 4.

3. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Vista Thompson Brown
Address: Department of Economic Security
1789 West Jefferson, Site Code 837A
Phoenix, Arizona 85007

or

P.O. Box 6123, Site Code 837A
Phoenix, Arizona 85005

Telephone: (602) 542-6555

Fax: (602) 542-6000

4. An explanation of the rule, including the agency's reason for initiating the rule:

The new Article 19, Contracts, is being proposed to implement the provisions of Laws 1994, Ch. 84, § 4 which requires the Department to develop rules that describe the contract process the Department follows in circumstances where it is exempt from A.R.S. Title 41, Chapter 23 ("The Arizona Procurement Code").

The rules define the circumstances when the Division will use the exemption. In addition, the rules include the specific contracting process in each identified circumstance. These rules will provide clear direction to both the Division and to providers regarding when and how the exemption is applied.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

The rules will have a positive but intangible economic impact on small business and consumers by codifying the process the Department follows under this exemption. These rules describe the process that the Division has used for contracting under the exemption for the past 6 years.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Eileen Collieran
Address: Department of Economic Security
1789 West Jefferson, Site Code 791A
Phoenix, Arizona 85007

or

P.O. Box 6123, Site Code 791A
Phoenix, Arizona 85005
Telephone: (602) 542-6826
Fax: (602) 542-6870

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Phoenix: District I

Date: December 14, 1995
Time: 1:30 p.m.
Location: DES Conference Room
815 North 18th Street
Phoenix, Arizona
Coordin. Program Mgr: Vince Ornelas (255-3722)

Tucson: District II

Date: December 14, 1995
Time: 1:30 p.m.
Location: DES Conference Room
815 North 18th Street
Tucson, Arizona
Coordin. Program Mgr.: Henry Granillo (628-6810)

Flagstaff: District III

Date: Thursday, December 14, 1995
Time: 1:30 p.m.
Location: DES Conference Room
220 North LeRoux
Flagstaff, Arizona
Coordin. Program Mgr.: Pam Estrella (779-2731, ext. 238)

Yuma: District IV

Date: December 14, 1995
Time: 1:30 p.m.
Location: DES Conference Room
350 West 16th Street, Yuma
Coordin. Program Mgr.: Tim Acuff (782-4343)

Casa Grande: District V

Date: December 14, 1995
Time: 1:30 p.m.
Location: DES Conference Room
2510 North Trekell
Casa Grande, Arizona
Coordin. Program Mgr.: Clay Ross (836-2351)

Bisbee: District VI

Date: December 14, 1995
Time: 1:30 p.m.
Location: District Conference Room
209 Bisbee Road
Bisbee, Arizona
Coordin. Program Mgr.: Marty White (432-5703)

The Department of Economic Security (DES) follows and supports Title II of the Americans with Disabilities Act. DES does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking, or otherwise

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participate in the public comment process. Persons with disabilities who need accommodation (including auxiliary aids or services) to participate in the above-scheduled hearings may contact the coordinating program managers identified above at least 72 hours before the scheduled hearing to request accommodation.

To request accommodation to participate in the public comment process, or to obtain this notice in large print, braille, or on audio tape, contact Vista Thompson Brown, at (602) 542-6555, P.O. Box 6123, Site 837A, Phoenix, Arizona 85005. TDD 1-800-367-8939.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
Not applicable.
11. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY
DEVELOPMENTAL DISABILITIES**

ARTICLE 19. CONTRACTS

Section

- R6-6-1901. Definitions
R6-6-1902. Contracting Process
R6-6-1903. Competitive Solicitation
R6-6-1904. Immediate or Emergency Need for Services
R6-6-1905. Acute Care - Solicitation of Service from Health Plans
R6-6-1906. Acute Care - Evaluation of Contracts; Cancellation
R6-6-1907. Acute Care - Award of Contracts
R6-6-1908. Acute Care - Protests
R6-6-1909. Acute Care Providers in County with No Health Plan
R6-6-1910. Statute, Regulation, Rule, or Programmatic Change
R6-6-1911. Procurement Records

ARTICLE 19. CONTRACTS

R6-6-1901. Definitions

The following definitions apply in this Article:

1. "Contract" has the same meaning ascribed to it in A.R.S. § 41-2503(4).
2. "Procurement" has the same meaning ascribed to it in A.R.S. § 41-2503(16).
3. "Request for proposals" has the same meaning ascribed to it in A.R.S. § 41-2531(13).

R6-6-1902. Contracting Process

- A. The Division shall procure goods and services as prescribed in A.R.S. Title 41, Chapter 23 ("The Arizona Procurement Code") except for goods and services described in Laws 1995, Ch. 84, § 3.
- B. The Division shall procure goods and services for contracts prescribed by Laws 1995, Ch. 84, § 3 which meet one of the following conditions, as prescribed in this Article:
1. The Division has issued a competitive solicitation as prescribed in A.R.S. §§ 41-2533 and 41-2534, and the solicitation has not resulted in the number of offerors needed to meet the service needs of the clients;
 2. The Division has identified an immediate or emergency service need and current providers cannot meet the need;
 3. The Division is competitively soliciting for acute care services from health plans;
 4. The Division requires acute care providers for a county in which:

- a. No health plan has responded to competitive solicitation;
 - b. The offeror has withdrawn from the competitive solicitation process; or
 - c. The offeror cannot reach an agreement with the Division during the competitive solicitation process; or
5. A federal or state statute, regulation, rule, or programmatic change requires the Division to make changes in mandated ALTCS services, in ALTCS service delivery, or in the administration of the DD/ALTCS program.

R6-6-1903. Competitive Solicitation

When competitive solicitation does not result in the number of offerors required to meet the service needs of the clients, the Division shall:

1. Recruit a potential offeror by advertisement, verbal discussions, or other means to meet the service need;
2. Verify that the offeror complies with all applicable Division and AHCCCS licensing and certification requirements;
3. Establish a contract with the identified offeror;
4. Request that each provider contracting under this rule submit proposals in response to the next competitive solicitation the Division issues under A.R.S. Title 41, Chapter 23 for these services;
5. Advise each provider that failure to respond to the next competitive solicitation shall result in expiration of the existing contract; and
6. Send each provider holding a contract under this Section a notice of the next competitive solicitation for the service.

R6-6-1904. Immediate or Emergency Need for Services

When the Division identifies an immediate or emergency need for service and the Division cannot locate a current provider to perform the service, the Division shall follow the steps listed in R6-6-1903 to procure a contract for this service.

R6-6-1905. Acute Care - Solicitation of Service from Health Plans

- A. The Division shall competitively solicit proposals from providers of acute care services. The request for proposals shall include, at a minimum, the following terms:
1. The time and date set for the proposal opening;
 2. The address of the office at which proposals are to be received;
 3. The period during which the proposal shall remain open;

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4. The service description, covered populations, geographic coverage, specifications, and a delivery or performance schedule;
5. The contract terms and conditions, including bonding or other security requirements, if applicable;
6. A provision for the award of contracts by category of member or service in order to secure the most financially advantageous offers for the Department;
7. A provision that each qualified offer be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal;
8. A provision for a procedure to request voluntary price reduction of offers from only those offerors who have been tentatively selected for award before the final award or rejection of offers;
9. The factors to be used in the evaluation;
10. The location and method for obtaining documents that are incorporated by reference in the Division's request for proposal;
11. The requirement that the offeror acknowledge receipt of all amendments issued by the Division;
12. The type of services required and a description of the work involved;
13. The type of contract to be used and a copy of a proposed contract form or provisions;
14. The estimated length of time during which services will be required;
15. A requirement for cost or pricing data;
16. The minimum information that the offeror shall submit with the proposal; and
17. A provision requiring that the offeror certify that the submission of the proposal does not involve collusion or other anti-competitive practice.

- B.** The Division shall conduct discussions, as provided in the request for proposal, with responsible offerors to provide clarity and full understanding of, and responsiveness to, the request for proposals.
- C.** The Division shall accord offerors fair treatment with respect to any opportunity for discussion and revision of proposals and may permit such revisions after submission and before award of the contract for the purpose of obtaining best and final offers.
- D.** Prior to the award of the contract, the Division shall not disclose any information derived from proposals submitted by competing offerors.
- E.** The Division may request voluntary price reduction of offers from offerors before the final award or rejection of offers.
- F.** The Division may issue one or more written requests for a best and final offer to responsive offerors which shall set forth the date, time, and place for the submission of this offer. The request for a best and final offer shall inform the offerors that, if they do not submit a notice of withdrawal or a best and final offer, the Division shall construe their immediately previous offer as their best and final offer.

R6-6-1906. Acute Care - Evaluation of Contracts; Cancellation

- A.** The Division shall base proposal evaluations on the evaluation factors set forth in the request for proposal.
- B.** The Division shall send a written notice of rejection to offerors whose proposals or offers are rejected and maintain a copy of the notice in the procurement file.
- C.** The Assistant Director may cancel a request for proposal or may reject any and all proposals in whole or in part if the Assistant Director determines that the cancellation or rejection

is in the Department's best interest based on the following factors:

1. The availability of funding.
2. The inability to come to agreement with offerors.
3. A change in the need for services.
4. The potential for loss of federal funds.
5. A change in federal or state requirements which affect the service specified in the proposal, and
6. Collusion or anti-competitive practice on the part of the offeror.

- D.** The Division shall document the reasons for the action in the procurement file.

R6-6-1907. Acute Care - Award of Contracts

- A.** The Division shall award a contract:
1. To the responsible and responsive offeror with the offer most advantageous to the Department based on the evaluation factors set forth in the request for proposal; and
 2. By either the category of members or the category of service, whichever is most financially advantageous to the Department.
- B.** The Division may award contracts to more than one offeror for each county in the state for the purpose of limiting the number of high-risk clients who may be included in each contract.
- C.** The Division shall not award a contract to any program contractor that will cause the Department to lose any federal monies to which it is otherwise entitled.
- D.** The Division shall document the reasons for the award in the procurement file.

R6-6-1908. Acute Care - Protests

- A.** The Assistant Director shall resolve any protest filed concerning a contract proposal or award.
- B.** An actual offeror may protest a contract proposal or award.
- C.** A protester shall file a written protest with the Assistant Director. The protest shall include the following information:
1. Name, address, and telephone number of the protester;
 2. Signature of the protester or its representative;
 3. Identification of the request for proposals or contract number;
 4. A statement of the legal and factual grounds of the protest including copies of any relevant documents; and
 5. The relief requested.
- D.** The protester shall:
1. File the protest prior to the closing date for receipt of initial proposals if the protest relates to a request for proposals; and
 2. File the protest within 10 working days after a contract award has been made public if the protest relates to the award of a contract.
- E.** A protest is deemed filed when the written document is received by the Division.
- F.** If a protest is filed before the award of a contract, the Division may award a contract unless the Assistant Director makes a written determination that there is reasonable probability that the protest will be sustained and that the stay of award of the contract is consistent with the best interests of the Department.
- G.** Within 14 work days of the filing date of a protest, the Assistant Director shall send a written decision to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall explain the reasons for the decision.
- H.** If the Assistant Director sustains the protest in whole or part and determines that the request for proposal, proposed

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contract award, or contract award does not comply with applicable statutes and rules, the Assistant Director shall implement an appropriate remedy as prescribed in subsection (J).

I. In determining an appropriate remedy, the Assistant Director shall consider the following:

1. Circumstances surrounding the procurement or proposed procurement.
2. The seriousness of the procurement deficiency.
3. The degree of prejudice to other interested parties.
4. The degree of prejudice to the integrity of the procurement system.
5. The good faith of the parties.
6. The extent of performance.
7. The costs to the Department.
8. The urgency of the procurement, and
9. The impact of the relief on the Department's mission.

J. The following actions, alone or in combination, shall serve as an appropriate remedy:

1. Decline to exercise an option to renew under the contract.
2. Terminate the contract.
3. Reissue the request for proposal.
4. Issue a new request for proposals, or
5. Award a contract as provided in these procurement rules.

R6-6-1909. Acute Care Providers in County with No Health Plan

When the Division does not obtain a response, an offeror withdraws from a competitive solicitation, or the Division cannot reach an agreement to contract with a health plan during competitive solicitation, the Division shall recruit individual providers for acute care services by following R6-6-1903(1), (2), and (3).

R6-6-1910. Statute, Regulation, Rule, or Programmatic Change

When a new federal or state statute, regulation, rule or programmatic change involving the DD/ALTCS program or administration requires the Division to comply by modifying current programs, the Division shall follow the steps in R6-6-1903(1), (2), and (3).

R6-6-1911. Procurement Records

The Division shall maintain the following records relating to the procurement of contracts in the procurement file, if applicable:

1. A copy of the request for proposal.
2. The offers received.
3. The best and final offers.
4. Written correspondence.
5. The basis for award.
6. The documentation required by R6-6-1906(D) and R6-6-1907(D).

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

PREAMBLE

- | | |
|--|--|
| <p><u>1. Sections Affected</u>
R12-5-413</p> <p><u>2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 37-132(A)(1)
Implementing statute: A.R.S. § 37-132(B)(2)</p> | <p><u>Rulemaking Action</u>
New Section</p> |
|--|--|

3. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: William P. Foster, Director
Planning and Disposition Division
Address: Land Department
1616 West Adams
Phoenix, Arizona 85007
Telephone: (602) 542-1704
Fax: (602) 542-2590

Name: Richard B. Oxford, Director
Operations Division
Address: Land Department
1616 West Adams
Phoenix, Arizona 85007
Telephone: (602) 542-4602
Fax: (602) 542-5233

4. An explanation of the rule, including the agency's reason for initiating the rule:

In 1993, the Arizona Legislature enacted A.R.S. § 37-132(B)(2) which authorized the State Land Commissioner to use private real estate brokers to assist in any sale or long-term lease of state land. The Department is authorized to pay, within certain parameters, a commission to licensed real estate brokers or their agents for their services associated with the successful selling or long-term commercial leasing of state properties at public auction.

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There are an estimated 50,000 licensed real estate brokers and agents throughout the state according to the Department of Real Estate. They are found in every county, although the vast majority is located in Maricopa, Pima, and Coconino counties. By enlisting their services, the Department will substantially improve its ability to market and dispose, either through sale or long-term lease, state properties in a timely manner to bring revenues to the State Trust.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

The Department proposes to adopt the rule for land sales and long-term commercial leases at public auction to facilitate marketing of State Trust properties that are ready for disposition.

The proposed rule enables the Commissioner to offer a commission for a publicly offered sale or long-term lease. The amount of the commission will not exceed 3% of the consideration paid for the land sold or long-term leased. The impact of the proposed rule will primarily be on the licensed real estate brokers in the state, who will now have the opportunity to increase the volume of their businesses by including state land sales or long-term commercial leases for which the Commissioner has determined that a commission will be offered. The impact will also be felt by the Department which will capitalize on the services of the brokers to market its properties, and by the potential bidders at public auction who will gain information about the properties from brokers and agents.

Other than the initial application fee to purchase or lease state land and advertising costs, the costs of processing lease or sales applications will be borne by the Department as a normal cost of doing business.

A vast majority of real estate brokerage firms are small businesses and many brokers and agents are self-employed. The professional skills and procedures required under the proposed rule are those required for licensed brokers and agents by the Department of Real Estate. All Arizona licensed brokers and agents, except employees of the Department and those who hold a present or future interest in the land or lease prior to close of escrow, will be eligible to receive a commission.

Because there are no adverse effects on small businesses anticipated under the proposed rule, no methods to reduce its impact are contemplated by the Department.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: William P. Foster, Director
Address: Planning and Disposition Division
State Land Department
1616 West Adams
Phoenix, Arizona 85007
Telephone: (602) 542-1704
Fax: (602) 542-2590

Name: Richard B. Oxford, Director
Address: Operations Division
State Land Department
1616 West Adams
Phoenix, Arizona 85007
Telephone: (602) 542-4602
Fax: (602) 542-5223

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No public proceeding is scheduled. A person may submit written comments or request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5 p.m., December 4, 1995, to the agency contacts listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

None.

11. The full text of the rules follows:

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TITLE 12. NATURAL RESOURCES

CHAPTER 5. LAND DEPARTMENT

ARTICLE 4. SALES

Section

R12-5-413. Real Estate Broker Commissions

ARTICLE 4. SALES

R12-5-413. Real Estate Broker Commissions

- A.** The Commissioner may offer a commission for the sale or long-term commercial lease of state land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of state land at public auction, the Commissioner shall consider the following factors:
1. The appraised value of the parcel being offered.
 2. The location and size of the parcel being offered.
 3. The terms of the sale or lease.
 4. The marketability of the land, and
 5. The best interest of the State Trust.
- B.** If a commission is offered for the sale or long-term commercial lease of state land at public auction, the commission shall be the amount collected pursuant to A.R.S. § 37-108(A)(10)(a).
- C.** The Department shall publish the decision of the Commissioner to pay or not to pay a commission for the sale or long-term commercial lease of state land and the amount and terms of the commission offered, if any, in the public notice of the auction.
- D.** Upon determination by the Commissioner that a commission shall be offered on a sale or long-term commercial lease, a person holding an active Arizona real estate broker license is eligible to receive the commission from the Department by registering with the Department the successful purchaser or lessee at public auction. The broker shall register himself or herself and the potential purchaser or lessee with the Department no later than 3 business days before the auction. Registration shall be in writing and include the following:
1. Name and address of the brokerage;
 2. Name and real estate license number of the broker and any real estate salesperson acting as an agent for the broker at the public auction;
 3. Name and address of the potential purchaser or lessee;
 4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and
 5. Signature of the broker or salesperson and the potential purchaser or lessee verifying that together they have inspected the land to be auctioned for sale or lease.
- E.** A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter located at 1616 West Adams, Phoenix, Arizona 85007. Registration shall be deemed received by the Department on the date postmarked, if mailed, or time-stamped, if hand-delivered. A broker shall not register the following:
1. A potential purchaser or lessee who is registered with another broker for the same auction, or
 2. A governmental agency.
- F.** The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.
- G.** The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this rule.
- H.** For the purpose of this Section, the following definitions apply:
1. "Long-term commercial lease" means a lease granted on state land for a term in excess of 10 years, but not more than 99 years, for commercial purposes to the highest and best bidder at public auction.
 2. "Commercial lease" means an agreement by which an owner of real property (lessor) gives the right of possession to another (lessee) for a specified period of time (term) and for a specified consideration (rent).

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

PREAMBLE

- | | |
|--|--|
| 1. <u>Sections Affected</u>
R17-4-435
R17-4-435.01
R17-4-435.02 | <u>Rulemaking Action</u>
Amend
Amend
Amend |
| 2. <u>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 28-202
Implementing statutes: A.R.S. §§ 28-2402 and 28-2412 | |

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3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Randall X. Ramsey
Address: Motor Vehicle Division Executive Hearing Office
4747 North Seventh Avenue
Phoenix, Arizona 85013-2401
Telephone: (602) 255-7737
Fax: (602) 241-1624

4. An explanation of the rule, including the agency's reasons for initiating the rule:

The Motor Vehicle Division is amending the rules to adopt the October 1, 1993, edition of 49 CFR. Specifically, the Division is adopting Subtitle B - Other Regulations Relating to Transportation, Chapter B - Federal Motor Carrier Safety Regulations, Parts 390, 391, 392, 393, 395, 396, 397, and 399. The existing rule adopted the October 1, 1992, edition of the Code of Federal Regulations. As a participant in the Motor Carrier Safety Assistance Program, Arizona has agreed to adopt and maintain rules consistent with the Federal Motor Carrier Safety Regulations. The Department of Transportation and the Department of Public Safety have certified, in the State Enforcement Plan, that the state will adopt and enforce the Motor Carrier Safety Regulations as required under the provisions of the Motor Carrier Safety Assistance Program as specified in 49 CFR 350 and 355.

The amendments to the rules are necessary to update the Motor Vehicle Division's rules governing motor carrier safety. Modifications to the text incorporated by reference are only intended to make the language more consistent with state terminology and are not intended to make any change to the content.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a local government of this state:

Not applicable.

6. The preliminary summary of the economic, small business and consumer impact:

There is only one change which will have any economic impact. Motor Carriers will be required to maintain an accident register. The register will contain information about accidents which have occurred during the previous 12-month period. The requirement to maintain an accident register is expected to have minimal economic impact on the motor carrier industry.

The benefit to law enforcement personnel and the Motor Vehicle Division is the ability to track a motor carrier's accident experience and to identify an individual carrier for further investigation and enforcement action, if necessary to protect the motoring public.

Small business does not receive any special consideration due to the federal mandate requiring adoption if the federal motor carrier safety regulations and their blanket application to all motor carriers.

Consumers will benefit from the rule if accident-prone carriers are identified and removed from the highways.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Randall X. Ramsey
Address: Motor Vehicle Division Executive Hearing Office
4747 North Seventh Avenue
Phoenix, Arizona 85013-2401
Telephone: (602) 255-7737
Fax: (602) 241-1624

8. The time, place, and nature of the proceedings for the amendment of the rules:

Written comments will be accepted at the address listed above until 5 p.m. December 15, 1995. Public hearings to receive oral comments regarding this proposal will be held as follows:

Date: December 13, 1995
Time: 10 a.m.
Location: Conference Room
3565 South Broadmont
Tucson, Arizona

Date: December 14, 1995
Time: 10 a.m.
Location: Department of Transportation
206 South 17th Avenue, Auditorium
Phoenix, Arizona

Date: December 15, 1995
Time: 10 a.m.
Location: Council Chambers
211 West Aspen
Flagstaff, Arizona

Individuals who wish to make oral comments by telephone may call (602) 255-7737 on December 14, 1995, from 1 p.m. to 4 p.m. The Department of Transportation follows Title II of the Americans with Disabilities Act. The Department of Transportation does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise.

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participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxilarly aids or services to participate in the above scheduled hearings, or who require this information in an alternate form, may contact the Executive Hearing Office at (602) 255-7737 as soon as possible so that the Department of Transportation will have sufficient time to respond.

To request accommodation to participate in the public comment period or obtain this notice in large print, braille, or on audiotape, contact Randall X. Ramsey at (602) 255-7737, P.O. Box 2100, Mail Drop 507M, Phoenix, Arizona 85013.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:

R17-4-435 incorporates by reference the October 1, 1993, edition of 49 CFR 390, 391, 392, 393, 395, 396, 397, and 399.

R17-4-435.01 incorporates by reference the October 1, 1993, edition of 49 CFR 390.

R17-4-435.02 incorporates by reference the October 1, 1993, edition of 49 CFR 391.

11. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

ARTICLE 4. MOTOR CARRIERS

Section

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Application; Definitions

R17-4-435.01. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers

ARTICLE 4. MOTOR CARRIERS

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Application; Definitions

A. Adoption of Federal Regulations

The Motor Vehicle Division adopts and approves as its own the following Parts of 49 CFR, as amended, revised, and printed in the October 1, 1993 1992, edition, incorporated herein by reference and on file in the Office of the Secretary of State: Subtitle B - Other Regulations Relating to Transportation, Chapter III - Federal Highway Administration, Subchapter B - Federal Motor Carrier Safety Regulations, Parts 390, 391, 392, 393, 395, 396, 397, and 399 as amended by these rules.

B. Application. The regulations of 49 CFR incorporated by subsection (A) shall apply as amended by R17-4-435.01 through R17-435.04 to:

1. Motor carriers as defined in A.R.S. § 28-2401 except Motor Carriers transporting passengers for hire in a vehicle with a design capacity of 6 or less persons.
2. All vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.

C. Definitions.

1. "Bureau of Motor Carrier Safety" means the Department of Transportation.
2. "Co-applicant" means an employer or potential employer.
3. "Division" means the Motor Vehicle Division, Department of Transportation.

4. "Division Director" means the Assistant Director of the Department of Transportation for the Motor Vehicle Division or the Assistant Director's designated agent.
5. "Waiver Board" means a four-member board appointed by the Division Director for the purpose of making recommendations on applications for intrastate waivers.
6. "49 CFR" means Title 49, Code of Federal Regulations.

R17-4-435.01 Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

A. 49 CFR 390 as incorporated in these rules is amended as follows:

1. 49 CFR 390.3 General Applicability. subsections (a), (b), and (c) are amended as follows:

a. Subsection (a) is amended to read:

The regulations adopted in this rule are applicable to all motor carriers operating in Arizona and all vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded pursuant to R17-4-436.

b. Subsection (b) is amended by adding the following sentence:

In addition to the requirements specified in 49 CFR 383, motor carrier drivers domiciled in Arizona who operate Commercial Motor Vehicles as defined in A.R.S. Title 28, Chapter 4, shall comply with the requirements of that Chapter and any rules promulgated thereunder.

c. Subsection (c) is amended to read:

Motor carriers operating in Arizona for the furtherance of a commercial enterprise shall comply with the financial responsibility requirements specified in A.R.S. Title 28, Chapter 7, Article 7, and 49 CFR 387.

2. 49 CFR 390.5 Definitions. The definitions listed in Section 390.5 are amended as follows:

a. Unless the term "Commercial Motor Vehicle" or "CMV" is used in reference to the licensing requirements of either 49 CFR 383 or A.R.S. § 28-402, in which case it shall have the same

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meaning prescribed therein. "Commercial Motor Vehicle" or "CMV" means any self-propelled, motor-driven vehicle or vehicle combination used on any public highway in this state in the furtherance of a commercial enterprise, which vehicle or vehicle combination:

- i. Has a declared gross weight of 20,001 lbs. or more; or
 - ii. Transports passengers for hire and has a design capacity of 7 or more persons; or
 - iii. Transports hazardous materials in an amount requiring placarding or marking pursuant to R17-4-436.
- b. "Exempt intracity zone" is deleted from R17-4-435.01 through R17-4-435.04 and the term shall have no application in these rules.
- c. "For-hire motor carrier", "private motor carrier of passengers", and "private motor carrier of property" are deleted from R17-4-435.01 through R17-4-435.04 and the term "motor carrier" shall be used in their place.
- d. "Gross combination weight rating" (GCWR) and "Gross vehicle weight rating" (GVWR) mean declared gross weight as defined in A.R.S. § 28-206.
- e. "Regional Director" means the Division Director.
- f. "Special agent" means an officer or agent of the Department of Public Safety, the Motor Vehicle Division, or of a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
- g. "State" means a state of the United States and the District of Columbia.
3. 49 CFR 390.15 Assistance in investigations and special studies. Subsection (3)(a) is amended to read:
- a. A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.

- 3-4. 49 CFR 390.21 Marking of motor vehicles. Subsection (a) is amended to read:

This Section shall apply to all motor carrier vehicles operated in Arizona. All motor carriers that are not subject to the marking requirements of the U.S. Department of Transportation shall mark their vehicles in accordance with the provisions of this Section. Such carriers shall use the letters "AZ" and their Arizona Use Fuel/Motor Carrier account number in lieu of the USDOT identification number, except that no identification number marking shall be required for those carriers exempt from the Use Fuel/Motor Carrier License requirement.

- 4-5. 49 CFR 390.23 Relief from regulations. Subsections (a), (a)(1), (a)(1)(A), (a)(1)(B), (a)(1)(B)(ii), (a)(2)(A), (a)(2)(B), (a)(2)(B)(ii), and (b) are amended as follows:
- a. Subsection (a) is amended to read:
- The regulations of 49 CFR incorporated by R17-4-435 shall not apply to any motor carrier, not subject to federal jurisdiction,

operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following conditions:

- b. Subsections (a)(1), (a)(1)(A), (a)(1)(B), and (a)(1)(B)(ii) shall not apply.
- c. Subsection (a)(2)(A) is amended as follows:
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency, and
- d. Subsection (a)(2)(B) is amended as follows:
The Arizona Department of Public Safety, Special Services Division, has determined that a local emergency exists which justifies an exemption from any or all of these Parts. If it is determined that relief is necessary to provide vital service to the public, relief shall be granted with any restrictions which they consider necessary.
- e. Subsection (b) is amended as follows:
"Interstate commerce" means in the furtherance of a commercial enterprise.

- 5-6. 49 CFR 390.25 Extensions of relief from regulations - emergencies is amended as follows:

Any motor carrier seeking to extend any period of relief shall obtain approval from the Arizona Department of Public Safety, Special Services Division. The motor carrier shall give full details of the additional relief requested. Taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the motor carrier, the Arizona Department of Public Safety shall extend any period of relief requested with any restrictions deemed necessary.

- 6-7. Section 390.27 Locations of regional motor carrier safety offices. This Section is amended to read:

Section 390.27 Any request for relief shall be made to the Arizona Department of Public Safety Special Services Division, Telephone (602) 223-2212.

R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers

- A. 49 CFR 391 as incorporated in these rules is amended as follows:

1. 49 CFR 391.2 General exemptions. The exceptions for "exempt intracity zone drivers" in subsection (d) do not apply.
2. 49 CFR 391.11 Qualifications of drivers. Subsection (b)(1) is amended to read:
Is at least 21 years of age for interstate operation; and at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of reportable quantities of hazardous substances, hazardous wastes required to be manifested, or hazardous materials in an amount requiring the vehicle to be placarded pursuant to R17-4-436.
3. 49 CFR 391.49 Waiver of certain physical defects. Subsections (a), (b), (c)(iv), (d)(3)(i), and (d)(3)(i)(B) are amended as follows:
 - a. Subsection (a) is amended by adding:
A person who is not physically qualified to drive under Section 49 CFR 391.41(b)(1), (2), or (10) who is otherwise qualified to drive a motor vehicle may drive a motor vehicle in

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intrastate commerce if the Division Director has granted an intrastate waiver to that person. Application for an intrastate waiver shall be submitted in accordance with subsection (4) of this rule. If granted, an intrastate waiver shall be for a period not exceeding two years. Once granted, an intrastate waiver may be transferred from an original employer to a new employer upon written notification to the Division Director stating the name of the new employer and the type of equipment to be driven.

- b. Subsection (b) is amended by adding:

A letter of application for an intrastate waiver may be submitted by the applicant, or jointly by the person who seeks an intrastate waiver of the physical qualification (driver applicant) and motor carrier (co-applicant) that shall employ the driver applicant if the intrastate waiver request is granted. The application shall be addressed to the Motor Vehicle Division, P.O. Box 2100, Mail Drop 531M, Phoenix, Arizona 85001-2100. The driver applicant shall comply with all the requirements of subsection (c) of 49 CFR 391.49, "Waiver of certain physical defects", except subsections (c)(1)(i) and (iii). The driver applicant shall respond to the requirements of subsections (c)(2)(ii) through (v) of 49 CFR 391.49, if the information is known.
 - c.. Subsection (c)(iv) is amended to read:

A description of the driver applicant's limb or visual impairment for which waiver is ~~re-~~quired requested.
 - d. Subsection (d)(3)(i) is amended to read:

The medical evaluation summary for a driver applicant disqualified under 49 CFR 391.41(b)(1) or (10) shall include:
 - e. Subsection (d)(3)(i)(B) is amended by adding:

Or a statement by the examiner that the applicant for an intrastate waiver has distant visual acuity of at least 20/40 (Snellen) or better, with or without a corrective lens, in one eye; a field of vision of at least 70 degrees in one direction and 35 degrees in the other direction of the horizontal meridian of the applicant's dominant eye; and the ability to distinguish the colors of traffic signals and devices showing standard red, green, and amber.
4. Waiver procedures for intrastate drivers.
- a. The Division Director shall:
 - i. Appoint a four-member Waiver Board consisting of the Division's Driver Waiver Program Manager or designated alternate, the Division's Medical Review Officer, and two other persons to consider requests for physical waivers.

- ii. Approve or disapprove a physical waiver after consideration of the recommendation submitted by the Waiver Board.
- b. The Waiver Board shall:
- i. Meet within not less than 20 or more than 30 days of receipt of an ~~interstate~~ intrastate waiver application.
 - ii. Review the application to insure that all provisions of 49 CFR 391.49 are met.
 - iii. Take necessary testimony and accept documentation and information pertinent to the application.
 - iv. Assure that drivers applying for an intrastate waiver of the visual requirements:
 - (1) Have driven the type of vehicle to be operated under the waiver for at least two of the previous five years; and
 - (2) Will not transport passengers for hire or transport reportable quantities of hazardous substances, hazardous wastes required to be manifested, or hazardous materials required to be placarded pursuant to A.A.C. R17-4-436.
 - v. Submit a written recommendation to the Division Director to approve or deny the waiver.
 - vi. Notify the applicant by mail:
 - (1) Prior to the review, of the date, time, and place of the review.
 - (2) After the decision of the Director, of the results of such decision concerning the approval or denial of the waiver.
- c. The applicant:
- i. Shall submit the application to the Division pursuant to 49 CFR 391.49(a), (b), (c), and (d) as amended by this rule.
 - ii. May request a summary review or may appear in person or through counsel at the review.
- d. Waiver form
- i. The waiver form shall reflect the terms, conditions, or limitations of the waiver.
 - ii. The original form shall be maintained by the Division.
 - iii. A legible copy shall be retained by the motor carrier as long as the driver is employed and for three years thereafter.
 - iv. A legible copy shall be in the possession of the driver when driving a commercial motor vehicle or otherwise on duty.
5. Subpart F - Files and Records
- 49 CFR 391.51 Driver qualification files. Subsection (b)(2) is amended by adding the following text:
or the Waiver board's ~~Board's~~ letter of notification, granting an intrastate waiver of physical disqualification, if a waiver is granted pursuant to this rule.
6. Subpart G - Limited Exemptions
- 49 CFR 391.71 Intrastate drivers of vehicles transporting combustible liquids.
- Exemptions in this Section do not apply.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANKS**

PREAMBLE

1. Sections Affected

R18-12-101
R18-12-102
R18-12-103
Article 7
R18-12-701
R18-12-702
R18-12-703
R18-12-704
R18-12-705
R18-12-706
R18-12-707
R18-12-708
R18-12-709
R18-12-710
R18-12-711
R18-12-712
R18-12-713
R18-12-714

Rulemaking Action

Amend
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New Article
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-104(B)(4)
Implementing statutes: A.R.S. §§ 49-1015 and 49-1072

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Margaret McClelland or Martha L. Seaman
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2222
Fax: (602) 207-2251
TTD: (602) 207-4829

4. An explanation of the rule, including the agency's reasons for initiating the rule:

The Department of Environmental Quality (Department) proposes R18-12-101 through R18-12-103 and R18-12-701 through R18-12-714, which will establish definitions and the requirements for the Underground Storage Tank Grant Program.

A. Background for the Proposed Rule

In 1994, the Arizona Legislature enacted Laws 1994, Ch. 248, which revised A.R.S. Title 49, Chapter 6, Article 4 to repeal the provisions for a loan program and establish, in its place, a grant account. The applicable statutory Sections are A.R.S. §§ 49-1071 through 49-1073. The statutes provide that the Department may make a grant of a limited amount to an owner or operator of an underground storage tank (UST) for purposes of stated corrective actions, system upgrades, or closures. The statute also provides for the Department's reasonable costs for administering the account to be reimbursed from the grant account.

The grant account is currently funded with approximately \$7,640,200, made up of \$5.6 million which was previously in the loan account, plus the interest earned on that initial funding. The grant account is not a revolving fund and there is no provision for additional funds to go into the account, except for interest earned on the account balance.

The legislative purpose for establishing the grant account was to benefit small or "mom and pop" UST operations, especially those in rural areas. The account will assist these UST owners and operators in upgrading their USTs to meet 1998 federal tank design requirements, closing USTs which will not be upgraded, and conducting corrective actions, without incurring considerable expense which could force the owners and operators to close down operation and abandon the tanks.

B. Section-by-Section Explanation of the Proposed Rules

R18-12-101. Definitions: A through F; R18-12-102. Definitions: G through P; R18-12-103. Definitions: R through Z.

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Definitions which are applicable to the proposed rules were added to these Sections to clarify what those terms mean within the context of the proposed rules.

R18-12-701. Allocation of grant account funds

This Section clarifies how funds in the grant account will be allocated. It also sets forth when the amount available from the fund will be determined, how the monies in the fund will be allocated to administrative costs, and how the amounts available will be apportioned among local governments and those applicants which are not local governments. Currently, money in the fund is collecting interest. At the end of the submission period, the Department will determine, based upon principal and the interest accrued, the amount available for issuing grants.

R18-12-702. Eligible projects

A.R.S. § 49-1072 establishes for which projects the Department may make a grant from the grant account. This Section further clarifies those projects and what statutory requirements must be met. This Section also establishes projects and activities which may not be conducted with grant funds.

R18-12-703. Maximum amount of grant per applicant or facility

This Section clarifies the amount available to each owner or operator who may have more than one facility. Given the limited amount available in the fund, and the fact that there is no provision made for any further allocations to the fund, the Department interprets A.R.S. § 49-1072 to limit the amount per owner or operator to a \$100,000 lifetime cap on the amount that a particular owner or operator may receive. If the owner and operator are the same person, only one lifetime cap is permitted. In the interest of equity, a limit of \$100,000 of grant funds may be used at any one facility. This allows the Department to spread the limited amount of available funds to more applicants and facilities.

R18-12-704. Grant application submission period

The Section clarifies the time periods when applications for grant funds will be received. The time period during which the application will be received is the submission period. The Department will determine the dates of the submission period and notice of the dates shall appear in the Underground Storage Tank News, a Department publication, and in a legal notice in the *Arizona Republic* newspaper. The rule also clarifies that applications received after the submission period shall not be considered for that submission period. However, the applicant may reapply during any subsequent submission period. It is currently unknown whether there will be more than one submission period. The Department expects that all funds currently available in the grant account will be used up after one submission period. The grant account is not a revolving account, meaning the legislature has not made provision for further placement of funds into the account. However, should additional funds be made available by the legislature, the rules, as written, would allow for further submission periods.

R18-12-705. Grant application process

This Section describes when an application shall be submitted to the Department by an applicant and the process for receiving and processing an application by the Department.

This Section describes the chronological order of the grant application process from submittal of the application by the applicant to determination by the Department of which applicants will receive a grant. The applicant is not required to provide, initially, the information required in R18-12-707(A)(6) through (9), which includes the surety bond, insurance policy, mechanics lien, and a copy of all contracts. These documents are not necessary prior to determination that the applicant will accrue priority points under R18-12-711 or R18-12-712.

R18-12-706. Grant application contents

This Section provides one Section where all of the requirements for application contents can be found. It sets forth the specific information required regarding the applicant, the facility, and the project. Among the necessary information is the information which will be used to develop priority points to determine which applicants will receive grants, three cost bids to determine the amount of the grant, and, when required, a work plan or business plan. A provision is also included for a certification by the applicant that all submitted information is true and complete to the best of the applicant's knowledge and belief.

R18-12-707. Work plan

This Section sets forth the requirements for the work plan for an eligible project for which the grant funds will be used. The work plan must include a diagram of the facility, a description of the activities necessary to complete the project, and the timetable for accomplishing those activities. Also to be included are the specifications for equipment to be installed, a surety bond and certificate of insurance or the actual policy covering the contractor's work and liability coverage, a copy of any mechanic liens, and a copy of all signed contracts. Where the project involves installation of corrosion protection, the engineering plan is required. Where the project involves corrective action, the requirements of the work plan provided for in the State Assurance Fund rules must be included. Where the project is limited to removal of a UST, the work plan must meet the requirements of a specified, nationally recognized code of practice.

R18-12-708. Business plan

This Section sets forth the requirements for the business plan which is required when the project involves UST replacement or upgrade. The intent is to reasonably ensure that a facility which receives grant funds will be able to continue to operate for at least 3 years following the issuance of a grant. Where the projects are confined to corrective actions or UST removal without replacement, a business plan is not required. The business plan must contain a description of the current operations of the facility, resumes of the owners and managers of the applicant and facility, and a description of the projected operations of the facility. The projected operations subsection includes requirements for projected financial statements. The Section also contains the standards for Departmental review and acceptance.

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R18-12-709. Review of application

This Section provides for review of applications and contains procedures for informing the applicant of deficiencies. Where an applicant is notified of a deficiency, the applicant is given 30 days to complete the application information. Provision is also made for a complete application which meets the requirements of the Article to be approved and proceed to the prioritization step. Where an applicant fails to meet the requirements, even after the deficiency notification, and the resubmission time has lapsed, that application will not be further considered.

R18-12-710. Feasibility determination

This Section establishes the standards which will be used by the Department to determine the feasibility of upgrading a UST with corrosion protection. A determination is required when the request is for either upgrade of an existing UST with corrosion protection or replacement of a UST. If the request is for replacement and the existing system can be upgraded, the amount of grant funds will not exceed the cost of upgrading. Where the UST cannot be upgraded, the grant may be approved for the cost of replacement. The cost of replacement is substantially more than upgrade and, with the limitation of \$100,000 per owner or operator or facility, may exceed the ceiling amount.

R18-12-711. Criteria for determining priority points for applicants other than local governments

This Section establishes the methods and standards which will be used to determine the number of priority ranking points for an application from an applicant who is not a local government.

R18-12-712. Criteria for determining priority points for applicants who are local governments

This Section was developed to establish the methods and standards which will be used to determine the number of priority ranking points for an application from an applicant who is a local government.

R18-12-713. Determination of grants to be issued

This Section sets forth the system the Department will use to determine which of the approved applicants will receive a grant award if the cumulative amount requested in approved applications exceeds the amount available for grants for a submission period. The Section lists the information needed to make the determination. Applications with the highest number of points will be first to be awarded grant funds, and, where a point tie exists, the date of receipt of the complete application will be the determining factor.

R18-12-714. Grant issuance: notification; payment

This Section establishes that applicants will be notified of the results of their application for a grant, and the requirements for payment of the grant funds to the applicant. The Section provides that payments in excess of any itemized cost on the bid will not be made, and, where all necessary information is provided and the invoice amount is not more than the cost bid, the invoice will be paid. If an applicant fails to submit the necessary information within 60 days of being notified of the grant issue, the Department will inform the applicant that a forfeiture of the grant funds has occurred.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a local government of this state:

Not applicable.

6. The preliminary summary of the economic, small business and consumer impact:

This Section summarizes the Department's analysis to date on the anticipated economic impacts of the proposed grant program rules. The impacts discussed below are based on information available to the Department at the time of proposal. Persons having any information which is relevant to these issues are asked to forward such data to the Department during the public comment period. The Department will use the information it collects to complete a final analysis of the economic impacts which will be published with the final rule. Therefore, the final Economic, Small Business, and Consumer Impact Statement may vary from the preliminary conclusions set below.

I. Preliminary conclusions:

Businesses impacted by this rule include owners or operators of USTs. Owners and operators of USTs will benefit from receipt of grant funds in an amount which could be as much as \$100,000. These are funds which do not have to be paid back to the state and which will allow the owners and operators to meet the 1998 federal upgrade requirements, close USTs or take corrective actions. Without the availability of grant funds, owners and operators might not otherwise be able to afford these actions. There will be a cost to owners and operators of USTs who choose to hire consultants to assist them in the application process. Not all owners and operators will find it necessary to hire consultants. For those who do hire consultants and are successful in securing a grant, the costs for those consultants will be paid either entirely, or partially, from grant funds. Applicants who are not successful in securing a grant will not be able to recover application costs.

Consultants and contractors who perform corrective action activities for cleanup of UST releases and vendors of tanks and related equipment and materials will also be benefitted by these rules. The expectation is that these businesses will benefit from contracts with, or purchases from, owners and operators of USTs in their efforts to comply with federal UST standards. The insurance and surety industries will also slightly benefit by the requirement for surety bonds and certificates of insurance.

Local governments which own or operate USTs will benefit in the same way as other owners and operators of USTs as discussed above.

Some of the owners or operators of USTs and some of the consultants, contractors, and vendors of tanks and related equipment and materials may be classified as small businesses. The owners and operators of USTs will benefit from the ability to get financial assistance for taking required actions with their tanks, which might otherwise not be financially possible. Contractors, consultants, and those who make and sell tanks will benefit from contracts with owners and operators of USTs for upgrading and replacement of tanks and conducting corrective actions.

This rule will have indirect impacts on consumers. Those who may be impacted are purchasers of gasoline who might benefit from competition between owners of USTs which are not forced to close because of inability to take corrective action for financial reasons. Consumers in rural areas will particularly benefit from having facilities available which might otherwise have

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to close, leaving no such services available in close proximity. Consumers who might wish to purchase real estate affected by a UST might benefit from corrective action taken and have a reduced chance of exposure from a leaking tank. The general public will benefit from more efficient and effective use of tax dollars and from the reduced possibility of negative impacts of exposure from a release from a leaking UST.

The Department expects that the economic impact of this rule to the Department will be moderate. The Department expects that most of the increased workload will be managed by re-prioritizing the workload of existing staff. There will be an increased cost to the Department for hiring at least one contractor to review the business plans to determine whether the operations which are the subject of the applications are going concerns.

The Department will also create 2 new positions. An Environmental Engineering Specialist will be hired to review the technical plans for upgrades. A Fiscal Services Specialist III will also be hired to coordinate the grant program for the Department. These 2 positions will be for a limited duration of 2 years. The Department will hire at least 1 contractor for determining the feasibility of upgrading for corrosion protection. The cost of hiring the contractors will be less than hiring new staff and the contractors will be used only on an as-needed basis. The cost of completing feasibility determinations will become part of the total grant issuance to the applicant.

The costs of administering the fund will be paid from the fund. The total cost of administering the grant fund will be \$255,500, over the life of the fund. Included in that amount is the cost of the two new positions, the outside contractors and other administrative support. The total amount of grants which will be issued is \$7,640,200. The total for administrative costs is less than 4% of the amount in the fund.

The overall economic impact of the rule will be that the benefits will outweigh the costs. Participation in the grant program is voluntary, and those who do not wish to be benefitted by the receipt of grant account funds will not be affected by these rules. Those who do wish to receive funds from the grant account will choose to do so because the benefits of receiving up to \$100,000 in grant account funds, which do not have to be paid back, outweigh the costs for them to comply with these rules. A regulated entity is not required to take advantage of this option and will do so only if it is economically advantageous to that entity to do so.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Margaret McClelland or Martha L. Seaman
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2222
Fax: (602) 207-2218
TTD: (602) 207-4829

8. The time, place and nature of the proceedings for the adoption, amendment or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: December 4, 1995
Time: 10 a.m.
Location: Department of Environmental Quality
Public Meeting Room
South Mall
3033 North Central Avenue
Phoenix, Arizona

Date: December 5, 1995
Time: 10 a.m.
Location: Mayor and Council Chambers
255 West Alameda
Tucson, Arizona

Date: December 6, 1995
Time: 11 a.m.
Location: Flagstaff City Hall
Flagstaff City Council Chambers
211 West Aspen
Flagstaff, Arizona

Oral proceeding for the proposed rule.

The Department will accept written comments which are received by 5 p.m. on December 12, 1995, or postmarked not later than that date.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporation by reference and their location in the rules:

R18-12-707(A)(6) - Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended as of July 1, 1994.

R18-12-707(C) - American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended as of December 1987, Supplement March 1989, Washington, D.C.

R18-12-710(A) - American Petroleum Institute publication 2015 "Safe Entry and Cleaning of Petroleum Storage Tanks" (January 1991) and the American Petroleum Institute publication 1632 "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" (December 1987, Supplement March 6, 1989).

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11. The full text of the rules follows:

TITLE 18: ENVIRONMENTAL QUALITY

CHAPTER 12: UNDERGROUND STORAGE TANK

ARTICLE 1. DEFINITIONS

- R18-12-101. Definitions: A through F
R18-12-102. Definitions: G through P
R18-12-103. Definitions: R through Z

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

- R18-12-701. Allocation of Grant Account Funds
R18-12-702. Eligible Projects
R18-12-703. Amount of Grant Per Applicant or Facility
R18-12-704. Grant Application Submission Period
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R18-12-706. Grant Application Contents
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ARTICLE 1. DEFINITIONS

R18-12-101. Definitions: A through F

In addition to the definitions prescribed in A.R.S. § 49-1001, the terms used in this Chapter shall have the following meanings:

1. "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action, compensation for bodily injury or property damage, or both, that is neither expected nor intended by the tank owner and operator.
2. "Ancillary equipment" means any devices used to distribute, dispense, meter, monitor, or control the flow of regulated substances to and from an UST, including, but not limited to, such devices as piping, leak detection equipment, fittings, flanges, valves, and pumps.
3. "Applicant" means an owner or operator who applies for a grant from the UST grant account in accordance with the provisions of Article 7 of this Chapter.
3. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
- 3-4. "Bodily injury" has the meaning given to this term by Arizona law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
- 4-5. "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors which are attached to a tank system and through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems shall be allocated equally between them.

5-6. "Consultant" means a person who performs investigative or remedial environmental services in response to a release from an UST.

6-7. "Contractor" means a person who performs removal, excavation, repair, or construction services at the facility where an UST release has occurred where that work is accomplished as part of a corrective action.

7-8. "Controlling interest" means direct ownership of at least 50% of a firm, through voting stock or otherwise.

8-9. "Corrective action services" means any services that are required to be performed by the Department in order to fulfill the regulatory requirements of A.R.S. § 49-1005 and the rules promulgated thereunder.

10. "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

9-11. "Cost ceiling amount" as described in R18-12-605 means the amount determined by the Department above which a cost for a corrective action service is not considered reasonable and shall not be reimbursed.

12. "Current assets" means assets which are available to finance current operations or to pay current liabilities those assets which can be converted to cash within one year.

13. "Current liabilities" means those liabilities which are payable within one year.

10-14. "Eligible person" means a member of the class of persons regulated by A.R.S. Title 49, Chapter 6, and the rules promulgated thereunder, not otherwise excluded, and including all of the following:

- a. Any owner, operator, or designated representative of an owner or operator.
- b. A political subdivision pursuant to A.R.S. § 49-1052(G).
- c. A person described by A.R.S. § 49-1052(H).

11-15. "Facility" means, with respect to any owner and operator, all underground storage tank systems used for the storage of regulated substances which are owned or operated by such owner and operator and located on a single parcel of property, or on any contiguous or adjacent property.

12-16. "Financial reporting year" means the latest consecutive 12-month period, either fiscal or calendar, for which financial statements used to support the financial test are prepared, including any of the following if applicable:

- a. A 10-K report submitted to the Securities and Exchange Commission.
- b. An annual report of tangible net worth submitted to Dun and Bradstreet.

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- c. Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.
- 13-17. "Firm" means any for-profit entity, not-for-profit entity, or governmental subdivision. An individual doing business as a sole proprietor is a firm for purposes of this Chapter.
- 14-18. "Free product" means a regulated substance that is present as a nonaqueous phase liquid.

R18-12-102. Definitions: G through P

In addition to the definitions prescribed in A.R.S. § 49-1001, the terms used in this Chapter shall have the following meanings:

- 1. "Grant request" means the total of the amount requested on the application for a grant from the UST grant account, plus any cost to the Department for conducting a feasibility determination in accordance with R18-12-710, in conjunction with the application.
- 2-2. "Legal defense cost" means any expense that an owner and operator or provider of financial assurance incurs in defending against claims or actions brought under any one of the following circumstances:
 - a. By EPA or a state to require corrective action or to recover the costs of corrective action.
 - b. By or on behalf of a third party for bodily injury or property damage caused by an accidental release.
 - c. By any person to enforce the terms of a financial assurance mechanism.
- 3. "Local government" has the meaning given this term by Arizona. The term is generally intended to include:
 - a. Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and
 - b. Special districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.
- 2-4. "Petroleum marketing facilities" mean all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- 3-5. "Petroleum marketing firms" mean all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.
- 4-6. "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- 5-7. "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.
- 6-8. "Property damage" shall have the meaning given this term by Arizona law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.
- 7-9. "Provider of financial assurance" means an entity that provides financial assurance to an owner and operator of

an underground storage tank through one of the mechanisms listed in R18-12-305 through R18-12-309 and R18-12-312, including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.

R18-12-103. Definitions: R through Z

In addition to the definitions prescribed in A.R.S. § 49-1001, the terms used in this Chapter shall have the following meanings:

- 1. "Report of work" means a written summary of corrective actions performed, either in their entirety or in phases as described in A.R.S. § 49-1005 and any rules promulgated thereunder and in 40 CFR 280, Subpart F, for addressing the UST release at the site. 40 CFR 280, Subpart F as amended as of July 1, 1991 (and no future editions), is incorporated herein by reference and is on file with the Department of Environmental Quality and the Office of the Secretary of State.
- 2. "Reserved and designated funds" means those funds of a nonprofit, not-for-profit, or local government entity which, by action of the governing authority of the entity or by the direction of the donor, may not be used for conducting UST upgrades, replacements, or removals, or for installing UST leak detection systems, or conducting corrective actions on releases of regulated substances.
- 2-3. "Substantial business relationship" means the extent of a business relationship necessary under Arizona law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
- 3-4. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. ~~For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.~~
- 4-5. "Termination" under 40 CFR 280.97(b)(1) and (2) as referenced in R18-12-307(B), means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. 40 CFR 280.97(B)(1) and (2), as amended as of July 1, 1991, (and no future editions), is incorporated herein by reference and is on file with the Department of Environmental Quality and the Office of the Secretary of State.
- 5-6. "Tester" means a person who performs tightness tests on underground storage tank systems, or on any portion of an underground storage tank system including tanks, piping, or leak detection systems where those tests are performed as part of a corrective action taken in response to a release from the UST system, and who meets qualifications pursuant to R18-12-601(F).
- 6-7. "UST" means an underground storage tank pursuant to A.R.S. § 49-1001(17).
- 8. "UST grant account" or "grant account" means the account designated pursuant to A.R.S. § 49-1071.
- 7-9. "UST regulatory program" means the program established by and described in A.R.S. Title 49, Chapter 6, and the rules promulgated thereunder.

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- 8-10. "UST system" or "Tank system" means an underground storage tank, and connected piping, ancillary equipment, and containment system, if any.
11. "Unreserved and undesignated funds" means those funds which are not reserved or designated funds and can be transferred at will by the governing authority to other funds.

**ARTICLE 7. UNDERGROUND STORAGE TANK
GRANT PROGRAM**

R18-12-701. Allocation of Grant Account Funds

The Department shall determine the total amount of funds in the grant account on the last day of the application submission period. Subject to the provisions of A.R.S. § 49-1015(A), the total amount of available funds shall be allocated as follows:

1. Up to 5.0% of the total amount of available funds shall be allocated for the expenses incurred by the Department in administering the fund.
2. Of the total amount available after the allocation for administrative fees, an amount shall be reserved for use by applicants which are classified as local governments based on the number of active facilities developed from the UST database in accordance with the following formula:
$$\text{Percentage amount reserved for local governments} = \frac{\text{number of local government facilities}}{\text{number of local government facilities} + \text{the total number of facilities, less state and federal facilities}}$$
3. Remaining funds, after subtracting the amounts determined under subsections (1) and (2) from the total amount in the grant account, shall be reserved for applicants which are classified as other than local governments.

R18-12-702. Eligible Projects

- A. An owner or operator of a UST may apply to the Department, during an application submission period, for a grant for the purpose of funding any of the following eligible projects:
1. Installing a leak detection system which meets the requirements of A.R.S. § 49-1003 and the rules promulgated thereunder.
 2. Upgrading a UST system by the addition of spill prevention, overflow prevention, or corrosion protection which meets the requirements of A.R.S. § 49-1009 and the rules promulgated thereunder.
 3. Replacing a non-complying UST with a UST which meets the requirements of A.R.S. § 49-1009 and the rules promulgated thereunder. The eligible project may include the cost of removal of the existing UST system. Removal of an existing UST system shall meet the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder.
 4. Payment of that portion of corrective action expenses which are equal to or less than either of the lower coverage limits prescribed in A.R.S. § 49-1054(A). The lower coverage limit shall be selected by the grant applicant and designated on the grant application at the time of submission. The corrective action shall meet the requirements of A.R.S. § 49-1005 and the rules promulgated thereunder.
 5. Removal of a UST from the ground if the UST will not be replaced, the removal meets the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder.
- B. An eligible project shall be limited to the work specified in the application, shall be approved by the Department pursuant to R18-12-709, and shall not include any of the following:

1. Additions to or alterations of all or part of any building or appurtenant structure at the facility;
2. Demolition of a building or appurtenant structure at the facility which is not necessary for completion of the eligible project. Grant funds may not be used for reconstruction or replacement of all or part of the building or appurtenant structure;
3. Resurfacing with new materials of a kind and quality exceeding that in place prior to commencement of the project. Resurfacing shall be limited to the minimum area of surfacing which was required to be removed or destroyed during the performance of the project. Resurfacing shall not include the cost of replacing islands unless necessary for the continued operation of the facility as demonstrated in the business plan required under R18-12-708;
4. Replacement or refurbishing of dispensers, canopies, awnings, or similar items which are not part of the necessary actions to comply with the statutory requirements for the project as set forth in subsection (A).

R18-12-703. Amount of Grant Per Applicant or Facility

- A. The Department shall not grant to any owner or operator total monies under this Article in an amount exceeding \$100,000. Where the owner and the operator are the same person, not more than a total of \$100,000 shall be granted to that person.
- B. The Department shall not grant monies under this Article in a total amount exceeding \$100,000 for eligible projects to be completed at any one facility.

R18-12-704. Grant Application Submission Period

- A. The Department shall establish the beginning and ending dates of each grant application submission period. A submission period may be established at least once per 12-month period following the effective date of this Article. The Department shall publish the dates of each submission period in the legal notices section of the *Arizona Republic* newspaper and in the *Underground Storage Tank News*, a quarterly newsletter which is published by the Department and available at the Department upon request.
- B. The date of postmark or, if hand delivered, the date stamped on the application by the Department shall be considered to be the date received by the Department. Any application received after the ending date of the submission period shall not be considered for that submission period.

R18-12-705. Grant Application Process

- A. Subject to the provisions of R18-12-706(A), an owner or operator shall submit to the Department during a grant application submission period described in R18-12-704 all of the information described under R18-12-706, except for the documents required under R18-12-707(A)(6) through (9), for each project for which grant funds are sought.
- B. After the close of the submission period, the Department shall review grant applications in the order received and determine the number of priority points accrued for each application in accordance with R18-12-711 or R18-12-712. If no priority points are accrued under R18-12-711(B)(3)(a) or R18-12-712(1)(a), the Department shall inform the applicant in writing that the application has been rejected.
- C. Where the application has not been rejected, the Department shall review the application and determine any deficiencies in the information submitted. The applicant shall be informed, in writing, of the deficiencies and be informed of the resubmission provisions under R18-12-709(B).
- D. Where a grant application involves either the upgrade of a UST system with corrosion protection under R18-12-702(A)(2) or replacement of a UST system under

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R18-12-702(A)(3), the Department shall determine the feasibility of performing an upgrade of the system in accordance with the requirements of R18-12-710.

- E. Following the end of the resubmission period the Department shall determine which applicants are to receive grant funds in accordance with R18-12-713 and make payments in accordance with R18-12-714.

R18-12-706. Grant Application Contents

- A. An owner or operator seeking a grant to fund an eligible project under R18-12-702 shall make application on a form provided by the Department. The application may contain information on more than one project at the facility provided that all requirements under this Article are met for each project. Where the same information is required for more than one project on the same application, the information shall be included only once and a reference made on the application to that information.

- B. The application shall contain all of the following information:

1. The name, telephone number, and mailing address of the applicant;
2. The federal employer identification (tax) number or social security number of the applicant;
3. A description of the applicant's status as either an owner or operator and classification as either a local government or other than local government;
4. The total number of UST facilities owned or operated by the applicant;
5. The UST owner identification number assigned by the Department to the person who owns the facility where the eligible project will be conducted;
6. The name and telephone number of a person the Department may contact in the event there are questions regarding the application or its attachments.

- C. The application shall contain all of the following information regarding the facility and UST at which the eligible project will be conducted:

1. The facility name, site address, and the associated County Assessor book, map, and parcel;
2. The UST facility identification number assigned by the Department;
3. The date of installation of the UST;
4. The regulated substance stored in the UST over the past 12 months;
5. The Leaking Underground Storage Tank number assigned by the Department to any releases at the facility;
6. A statement as to whether the facility is involved in marketing of regulated substances from UST systems;
7. The distance, in miles, from the facility to the nearest alternative source of the same regulated substance as stored in the UST system;
8. If the eligible project is one described under R18-12-702(A)(1) through (3), a business plan prepared in accordance with R18-12-708.

- D. The application shall contain all of the following information regarding the eligible project:

1. A statement of the kind of eligible project as listed in R18-12-702(A);
2. A work plan which meets the requirements of R18-12-707. The work plan shall be the basis for all cost bids submitted with the application;
3. The total amount of grant funds requested under the application. The amount requested shall be the lowest of three written, detailed, firm, fixed cost bids for complet-

ing the eligible project. All three cost bids shall be for projects which will use the same methodology to achieve compliance with the regulatory requirements for the project.

4. Each written, firm, fixed cost bid shall include, for each itemized cost, a description of the kind of work, equipment, or materials and any labor, transportation, or other activities which make up the itemized cost. Each itemized cost shall refer to the specific item contained in the work plan which will be completed for that itemized cost;

5. The total amount of costs incurred for professional services directly related to the preparation of the grant application, including the cost, if any, of the written, firm, fixed cost bids;

6. If the purpose of the grant is to conduct corrective action, documentation of the amount of the State Assurance Fund deductible which will be chosen;

7. The name and address of each service provider, including subcontractors, which performed, or will perform, services required to conduct the eligible project, and all of the following information for each service provider:

- a. Identification as a consultant, contractor, engineer, subcontractor, tester, or other professional classification whether a license from the Arizona Board of Technical Registration is required for the profession;
- b. Contractor license number issued by the Arizona Registrar of Contractors;
- c. License number issued by the Arizona Board of Technical Registration;
- d. The name and telephone number of the project contact person.

- E. An applicant applying on behalf of an individual, or a firm classified as other than local government, shall submit to the Department a copy of all of the following:

1. The balance sheet from the most recent completed fiscal year for the firm and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than one year from the date of the application. The balance sheet shall include all of the following:

- a. Total assets and total liabilities,
- b. Total intangible assets,
- c. Total current assets and total current liabilities,
- d. Current year-end net worth.

2. For individuals and sole proprietorships, the applicant's personal financial statement which meets all of the requirements of subsection (E)(1).

3. For partnerships and S corporations, the personal financial statement which meets the requirements of subsection (E)(1) for each owner of 20% or more of the firm.

4. Applicants who wish to be eligible for priority points under R18-12-711(G), shall, subject to the provisions of subsections (E)(2) and (E)(3), submit to the Department a copy of the most current federal and state annual tax returns which show all of the following:

- a. Total revenues and total expenses,
- b. Total revenues from operation of UST facilities

- F. Where the applicant firm is a wholly-owned subsidiary, the applicant shall provide to the Department a copy of all documents required under subsection (E) of this Section for

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the parent firm. The Department shall determine financial need based upon the financial statements of the parent firm.

- G. Where an application is made on behalf of a nonprofit or not-for-profit entity organized under the provisions of A.R.S. Title 10, the applicant shall submit to the Department a copy of the letter from the Arizona Corporation Commission granting nonprofit or not-for-profit status along with the most recent year-end balance sheet and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than one year from the date of the application. The balance sheet shall include all of the following:

1. The information described under subsections (E)(1)(a) through (d);
2. Current year-end and prior year-end reserved and designated fund balances;
3. Current year-end and prior year-end unreserved and undesignated fund balance;
4. If the applicant wishes to be eligible for priority points under R18-12-711(G), a copy of the most recent year-end statement of revenues and expenses prepared simultaneously with the balance sheet shall be submitted to the Department and shall show all of the information required under subsections (E)(4)(a) and (b).

- H. Where application is made on behalf of a local government, the applicant shall submit to the Department a copy of the balance sheet for the most recent completed fiscal year and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than one year from the date of the application. The balance sheet shall include all of the following:

1. Current year-end and prior year-end reserved and designated fund balances;
2. Current year-end and prior year-end unreserved and undesignated fund balance;
3. Total current assets and total current liabilities.

- I. The applicant shall sign and have notarized a certification statement that, to the applicant's best information and belief, all information provided on the application and attachments to the application is true and complete.

R18-12-707. Work Plan

- A. A work plan for a grant for an eligible project under R18-12-702(A)(1) through (3) shall contain all of the following:

1. A site plan which includes a diagram of the facility showing the location of each of the USTs involved in the project, the access routes to the UST involved, any obstructions to access to the UST including natural or man-made barriers, canopies, buildings, and other structures;
2. A plan which includes specific actions to be taken during the installation or removal of any equipment or material;
3. A timetable for the incremental steps and completion of the project;
4. The specifications, as supplied by the manufacturer, for all equipment to be installed, including, if one exists, the third-party certification of performance standards for probability of detection and probability of false alarm for leak detection equipment in accordance with A.R.S. § 49-1003;
5. Where the eligible project includes the addition of corrosion protection to a UST under R18-12-702(A)(2) or replacement of a UST under R18-12-702(A)(3), the

applicant shall submit the engineering plan, where necessary, for the installation of the UST prepared by the corrosion expert and the supporting documents demonstrating the effectiveness of the corrosion protection system under the site-specific conditions where it will be operating;

6. The original of the surety bond with a penal sum in the amount of the contract which names the Department and the applicant as obligee and the contractor as principal for each service provider on the eligible project. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended as of July 1, 1994, and no future editions, incorporated herein by reference and on file with the Department of Environmental Quality;

7. A copy of the general liability insurance policy or a certificate of insurance for the general liability policy of each contractor who will provide services during the completion of the eligible project. The general liability insurance policy shall include coverage for pollution liability and shall name the Department as an additional insured for any liabilities incurred in relation to the eligible project;

8. A copy of any mechanic's lien placed on the facility or the equipment at or to be installed at the facility in conjunction with the eligible project;

9. A copy of each contract signed by the owner or operator concerning the eligible project.

- B. A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under R18-12-607(B)(1) and (2) and the requirements of subsections (A)(6) through (9) of this Section.

- C. A work plan for a grant for an eligible project under R18-12-702(A)(5) shall comply with the requirements of subsections (A)(1) through (4), and (A)(6) through (9) of this Section and contain provisions for compliance with the standards of the American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended as of December 1987, Supplement March 1989, Washington, D.C., and no future editions, incorporated herein by reference and on file with the Department.

R18-12-708. Business Plan

- A. An application for an eligible project under R18-12-702(A)(1) through (3) shall contain a business plan. The business plan shall demonstrate the potential for continued operation, for at least three years after the issuance of the grant, of the facility at which the UST located. The business plan shall contain all of the following:

1. A description of the current operations of the applicant which contains all of the following:

- a. The designation of the applicant as an individual, sole proprietorship, general partnership, limited partnership, C-corporation, S-corporation, joint venture, nonprofit or not-for-profit entity, local government, or another specified form of legal organization;

- b. The nature of the operation, its history and background over its life or over the last 3 years, whichever is the shorter period;

- c. A discussion of the market in which the applicant operates including the kinds of products and services provided the geographic area served, and a

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general description of the size, growth, density, and distribution of the population served.

- d. The number of employees and the number of hours worked per week for each.
2. A written statement of the job history and work experience for each owner or officer of the applicant and of each manager of the facility.
3. A description of projected operations of the facility. The description shall contain all of the following:
 - a. A description of the planned changes to the operation of the facility. If no changes are planned, a statement of the reason for requesting a grant and how the receipt of the grant will assist in the continued operation of the facility.
 - b. An estimate of expected revenue and expense by year for the 3-year period following the issuance of a grant. The estimate shall contain the major assumptions for:
 - i. Revenue by source by year.
 - ii. Expenses, including annual debt service and contingent liabilities, by year.
- B. The business plan shall be reviewed by the Department, in accordance with generally accepted accounting principles, to determine if the business is a viable entity which is capable of continuing in business for three years following the grant issue. All of the following shall be considered:
 1. Existence of a significant contingent liability.
 2. History of profits or losses from operations.
 3. Extent of owner equity.
 4. Market potential.
 5. Stability of key management personnel.
 6. Legality of operations.
- C. The financial statements required under this Section shall be prepared in accordance with generally accepted accounting principles and a financial analysis by a certified public accountant shall not result in a qualification.

R18-12-709. Review of Application

- A. The Department shall review a grant application to determine whether the application contains all of the information required in, and meets the requirements of, this Article.
- B. Where the Department determines that the application is not complete or otherwise fails to meet the requirements of this Article, the Department shall send to the applicant, via certified mail, a written statement of deficiencies. The Department may include in the mailing any part of the application found to be deficient. The applicant shall have 30 days from the date of receipt, as evidenced by the date on the return receipt, to correct all deficiencies and resubmit the application or information to the Department. The date of postmark or, if hand delivered, the date stamped on the application by the Department shall be considered the date of resubmission to the Department.
- C. An application determined by the Department to contain all of the information required in and meet the requirements of this Article shall be approved and prioritized in accordance with the provisions of R18-12-713. An application which remains deficient at the end of the resubmission period shall not be considered.

R18-12-710. Feasibility Determination

- A. For eligible projects listed in R18-12-702(A)(2) and (3) which involve corrosion protection, the Department shall determine the feasibility of upgrading or replacement of the UST. The feasibility determination shall be based on an internal UST inspection report of the existing UST, conducted by an Arizona licensed contractor. The inspection

report shall include a certification by the contractor that the inspection was conducted and the feasibility determination made in accordance with the American Petroleum Institute publication 2015 "Safe Entry and Cleaning of Petroleum Storage Tanks" (January 1991) and the American Petroleum Institute publication 1632 "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" (December 1987, Supplement March 6, 1989), incorporated by reference and on file with the Department.

- B. The amount of grant monies approved for an eligible project shall correlate to the results of the feasibility determination. Where the feasibility determination concludes that a UST can be upgraded with corrosion protection, but the application requests grant funds for replacement of the UST, the Department shall not approve any amount in excess of the estimated upgrading costs for the UST. Where a UST cannot be upgraded with corrosion protection, and the application requests grant funds for upgrade of the UST, the Department may approve the amount of the estimated replacement cost of the existing UST.

R18-12-711. Criteria for Determining Priority Points for Applicants Other than Local Governments

- A. A grant application for an owner or operator who is not a local government shall accrue priority ranking points in accordance with this Section. The maximum number of possible points shall be 105.
- B. Financial need shall have a potential point total of 50 and, subject to the provisions of subsections (B)(1) and (2), shall be accrued in accordance with subsections (B)(3)(a) and (b).
 1. Where the applicant is a Chapter S corporation, the balance sheets from the most current completed fiscal year for the corporation and for each person who owns 20% or more of the corporation shall be combined to determine the total tangible net worth, current assets, and current liabilities to be used in subsections (B)(3)(a) and (b).
 2. Where the applicant is a nonprofit or not-for-profit entity organized under A.R.S. Title 10, the total tangible net worth, current assets, and current liabilities used to determine the number of priority points under subsections (B)(3)(a) and (b) may be reduced by any reserved and designated fund balances. All reserved and designated fund balances to be deducted shall appear on the balance sheet submitted in accordance with R18-12-706(G).
 3. Priority points shall be allocated as follows:
 - a. A maximum of 25 priority points may be accrued based on the ratio, expressed as a percentage, of the Grant request divided by tangible net worth. The tangible net worth shall be determined from the information submitted as required under R18-12-706(E) through (G) and the provisions of subsections (B)(1) and (2) of this Section. Priority points shall be accrued as follows:

PERCENTAGE	POINTS
20% or more	25 Points
16% up to 20%	20 Points
12% up to 16%	15 Points
8% up to 12%	10 Points
4% up to 8%	5 Points
Less than 4%	0 Points
 - b. A maximum of 25 priority points may be accrued based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the

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information submitted as required under R18-12-706(E) through (G) and subsections (B)(1) and (2) of this Section. Priority points shall be accrued as follows:

PERCENTAGE	POINTS
Less than 100%	25 Points
100% up to 125%	20 Points
125% up to 150%	15 Points
150% up to 175%	10 Points
175% up to 200%	5 Points
200% or more	0 Points

C. A maximum of 10 priority points may be accrued based on the date of installation of the tank as follows:

DATE OF INSTALLATION	POINTS
1. After December 22, 1988	0 Points
2. May 7, 1985, through December 22, 1988	3 Points
3. Prior to May 7, 1985	10 Points

D. A maximum of 25 priority points may be accrued based on the threat to human health and the environment by the presence of an active, leaking, underground storage tank (LUST) site at the facility as follows:

1. Active LUST site at the facility which has impacted groundwater	25 Points
2. Active LUST site at the facility which has not impacted groundwater	15 Points
3. No active LUST site at the facility	0 Points

E. A maximum of 5 priority points may be accrued based on the extent of the geographic area served depending on whether or not the facility markets regulated substances as follows:

1. Marketing facility	5 Points
2. Other than Marketing facility	0 Points

F. A maximum of 10 priority points may be accrued based on the distance to the nearest alternative source of regulated substance to the community as follows:

DISTANCE	POINTS
1. Less than 5 miles	0 Points
2. Five miles up to 10 miles	5 Points
3. Ten miles or more	10 Points

G. An additional 5 points shall accrue to an applicant who, based on information in the application, meets all of the following:

1. Has annual total revenue of less than \$1 million.
2. At least 50% of the annual total revenue is derived from the operation of UST facilities.
3. Owns or operates no more than two UST facilities.

R18-12-712. Criteria for Determining Priority Points for Applicants Who are Local Governments

A grant application of an owner or operator which is a local government shall accrue priority ranking points in accordance with this Section. The maximum number of possible points is 100. Point assignment shall be made as follows:

1. Financial need shall have a potential point total of 50 and be allocated as follows:

a. A maximum of 25 priority points may be accrued from the ratio, expressed as a percentage, of the grant request divided by total unreserved and undesignated fund balance shall be accrued as follows:

PERCENTAGE	POINTS
20% or more	25 Points
16% up to 20%	20 Points
12% up to 16%	15 Points
8% up to 12%	10 Points
4% up to 8%	5 Points

Less than 4% 0 Points

- b. A maximum of 25 priority points may be accrued from the ratio, expressed as a percentage, of the total of the current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the balance sheet submitted in accordance with R18-12-706(H) and be accrued in accordance with R18-12-711(B)(3)(b).
2. Additional priority points may be accrued in accordance with R18-12-711(C) through (F).

R18-12-713. Determination of Grants to be Issued

A. The Department shall determine all of the following:

1. The total amount of the request for each application which is approved under R18-12-709, and any feasibility determination expense incurred by the Department in complying with the requirements of R18-12-710. Subject to the provisions of R18-12-703, the total of the amount requested and the feasibility determination expense shall be the amount of the grant issue.
2. The total number of priority points accrued by the applicant under R18-12-711 or R18-12-712.
3. The amount of funds available for each classification of applicant in accordance with R18-12-701(2) and (3).
4. The date on which the complete application was received or, if the application was not complete, the date on which the information requested in the deficiency letter which completed the application was received.

B. The Department shall rank each application within each applicant classification in numerical order of priority points with the highest number of points being the highest rank and the other applicants in descending order.

C. From the total amount of funds available for each applicant classification, the Department shall subtract, in descending numerical order of total priority points of each applicant, the amount approved for each eligible project until all available funds are committed. Applications which have funds committed shall be approved for issuance. Applications which do not have funds committed shall be denied for issuance.

D. Where 2 or more applicants have the same number of priority points and available grant funds are insufficient to make issues to all of these applicants, the applications shall be ranked by date received. The application with the earliest received date stamped on the application shall have first acceptance for grant issue. The application with the next earliest date received shall have next acceptance, and so forth until all available grant funds are committed. Where an application was received incomplete and the deficiencies later corrected, the application shall be placed in rank order for grant issue by using the date of receipt of the material completing the application.

R18-12-714. Grant Issuance: Notification: Payment

A. Within 90 days following the end of the submission period, the Department shall notify each applicant, in writing, of the denial or approval of a grant issuance. The determination of denial or approval shall be made in accordance with R18-12-713. A notice of grant approval shall contain all of the following:

1. A statement of the original amount of the applicant's grant request.
2. An explanation of all reductions or adjustments which reduce or change the original grant request amount and the reason for each change.
3. A statement of the amount of the grant issue.
4. The provisions of subsections (B) through (D) of this Section.

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B. The Department shall not make any payment to the applicant or a person providing services or equipment to the applicant for the purpose of completing the approved eligible project unless the Department has received all of the following:

1. The documents required under R18-12-707(A)(6) through (9);
2. Original invoices for work performed or equipment installed in conjunction with the eligible project. Each invoice shall reference the work performed or the equipment installed to the specific item or task in the work plan;
3. A written statement, signed by the applicant and the person acting as general contractor on the eligible project, which certifies that all work, equipment, or materials itemized on each invoice have been performed, used, or installed in accordance with the work plan approved by the Department. The statement shall contain, for each invoice itemized, the invoice number

and the total amount of the invoice. The signatures appearing on the certification shall be notarized;

4. An agreement signed by the applicant and the person serving as the general contractor on the approved eligible project which designates the person to be shown as payee on all warrants issued in payment for work and equipment on the approved project.
- C. The Department shall not make total payments in excess of the amount in the written, detailed, firm, fixed cost estimates which were approved by the Department.
- D. Where all of the requirements of subsection (B) are met and subject to the provisions of subsection (C), the Department shall issue a warrant for the amount of the submitted invoice. Where an applicant has been notified of a grant issuance but fails to meet the requirements of subsection (B) within 60 days of the notice of grant issue, the applicant shall be informed in writing by the Department that the grant issue has been forfeited by the applicant. A forfeited grant issue shall be returned to the grant fund.